STACK

Dates	(1) Position in Party	EVIDENCE RE STATEMENTS CONCERNING REVOLUTION			EVIDENCE RE MARXISM-LENINISM	
		(2) By Petitioner	(3) Presence When Others Spoke—Closed Meetings	(4) Presence When Others Spoke—Public or Open Meetings	(5) Utterances and Personal Use of Books by Petitioner	(6) Connection With M-L Other Than Utterances and Personal Use of Books
Pre-1940	1932—Member	1934—Said that in Lenin School in Moscow learned street-fighting, etc., and duty to work to overthrow gov't and set up dictatorship of proletariat.	None	None	None	None
1940-1944	None	None	"	"	"	"
1945	Delegate to Natl Convention Member Calif. State Committee State Sec'y or Org. Sec'y	"	"	"	Urged Marxist-Leninist rules. Said American workers will be grave diggers of capitalistic government.	"
1946	State Sec'y or Org. Sec'y	"	"	"	None	"
1947	State Sec'y or Org. Sec'y	"	"	"	"	"
1948	State Sec'y or Org. Sec'y	Women should support revolution, the overthrowing of present economic system in its entirety.	"	"	Urged Marxist Party, based on proletariat and Marxist principles.	"
1949	State Sec'y or Org. Sec'y	None	"	"	None	"
1950	Member Calif. State Committee	"	"	"	"	"
1951	None	"	"	"	"	"

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STEINBERG

Dates	(1) Position in Party	EVIDENCE RE STATEMENTS CONCERNING REVOLUTION			EVIDENCE RE MARXISM-LENINISM	
		(2) By Petitioner	(3) Presence When Others Spoke—Closed Meetings	(4) Presence When Others Spoke—Public or Open Meetings	(5) Utterances and Personal Use of Books by Petitioner	(6) Connection With M-L Other Than Utterances and Personal Use of Books
Pre-1940	1936—Member YCL	None	None	None	None	None
1940-1944	1940—Member, "practical politician"	"	"	"	"	"
1945	None	"	"	"	"	"
1946	County Educational Director	"	"	"	"	"
1947	County Educational Director	"	"	"	"	"
1948	None	"	"	"	"	"
1949	"	"	"	"	Chaired public meeting and announced it as a "Lenin Memorial Meeting"	"
1950	County Legislative Director	"	"	"	None	"
1951	None	"	"	"	"	

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In the Supreme Court of the United States

OCTOBER TERM, 1955

Nos. 308, 309, 310

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, FRANK EFROIM SPECTOR, WILLIAM SCHNEIDERMAN, AL RICHMOND, ALBERT JASON LIMA, CARL RUDE LAMBERT, ROSE CHERNIN KUSNITZ, ERNEST OTTO FOX, BEN DOBBS, DOROTHY HEALEY CONNELLY, PHILIP MARSHALL CONNELLY AND FRANK CARLSON, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The written opinions of the District Court (Pet. App. B) are reported in 102 F. Supp. 87, 104 F. Supp. 405, 106 F. Supp. 737, 892 and 906. The opinion of the Court of Appeals (Pet. App. A) is not yet reported.

YATES

Dates	(1) Position in Party	EVIDENCE RE STATEMENTS CONCERNING REVOLUTION			EVIDENCE RE MARXISM-LENINISM	
		(2) By Petitioner	(3) Presence When Others Spoke—Closed Meetings	(4) Presence When Others Spoke—Public or Open Meetings	(5) Utterances and Personal Use of Books by Petitioner	(6) Connection With M-L Other Than Utterances and Personal Use of Books
Pre-1940	1933—Member 1936—County Organizer, District Comm. Member, Natl. Conv. Delegate 1937-40—Various County Officers	None	None	None	1936-37—Used books while lectured at school.	None
1940-1944	1940-43—Various County Offices 1944—County Chairman	"	"	"	None	"
1945	County Chairman	"	"	Mother Bloor, 83-yr. old woman, predicted violent rev. with blood flowing in streets and praised UN, FDR and peace.	Taught a Marxist class.	"
1946	County Chairman	"	Petitioner Fox said CP "revolutionary", "Wanted to see overthrow of lousy system" but time for militant action not arrived yet.	None	Contributed an article to Political Affairs.	"
1947	County Chairman	"	Petitioner Schneiderman said change to socialism would be violent because masters of finance capital would not permit majority to change peacefully.	"	None	"
1948	County Chairman	"	None	"	"	"
1949	County Chairman	"	"	"	Prepared a study outline for a Marxist Institute—stating opposition to force and violence.	"
1950	State Organizational Chairman	"	"	"	None	"
1951	State Organizational Chairman	"	"	"	"	"

JURISDICTION

The judgment of the Court of Appeals was entered on March 17, 1955 (Pet. App. 46).[1] A petition for rehearing was denied on June 15, 1955. On June 27, 1955, Mr. Justice Frankfurter extended the time for filing petitions for writs of certiorari to August 13, 1955, and the petitions were filed on August 10, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain the convictions.

2. Whether the overt acts alleged and proved were in furtherance of the conspiracy.

3. Whether, as to petitioner Schneiderman, this Court's decision in *Schneiderman* v. *United States,* 320 U. S. 118, required application of principles of *res judicata* and collateral estoppel.

4. Whether the charge to the jury properly applied the principles of *Dennis* v. *United States,* 341 U. S. 494.

5. Whether there was a sufficient finding of "clear and present danger."

6. Whether the trial judge properly instructed the jury as to the meaning of "organize" as used in the Smith Act.

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[1] References to Petitioners' Appendix are abbreviated "Pet. App."

7. Whether the trial judge erred in denying petitioners' motions for a continuance and a mistrial.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The statutes and constitutional provisions involved are set forth in Petitioners' Appendix (App. D).

STATEMENT

THE PROCEEDINGS BELOW

On December 21, 1951, petitioners were indicted (Clerk's Record, p. 2; see also 106 F. Supp. at 930–932) in the United States District Court for the Southern District of California for conspiring with each other and with the *Dennis*[2] conspirators "to commit offenses against the United States prohibited by Section 2 of the Smith Act * * * in violation of" Section 3 of the Smith Act until repealed by the 1948 revision, and thereafter in violation of the general conspiracy statute, 18 U. S. C. 371, by (1) knowingly and willfully advocating violent overthrow of the Government, with the intent of causing such violent overthrow as speedily as circumstances would permit; and (2) with the same knowledge and intent, organizing and helping to organize the Communist Party to so advocate.

Paragraphs 2–8 of the indictment charge that it was part of the conspiracy, *inter alia*, that the petitioners and their co-conspirators would be-

[2] *Dennis* v. *United States*, 341 U. S. 494.

come members, officers, and functionaries of the Party and thereby assume leadership and responsibility for carrying out its policies and activities (par. 2); that they would organize groups, clubs, sections and other units of the Party and would recruit members, concentrating on recruiting persons in key industries and plants (par. 3); that they would publish and circulate books and newspapers, such as the *People's World,* and would write articles and publish directives therein (pars. 4 and 5); that they would conduct and cause to be conducted schools and classes in which recruits and Party members would be indoctrinated in the Marxist-Leninist principles of violent revolution (par. 6); that vital parts of the Party would go underground and continue the conspiracy from that position; and that false names and documents would be used (pars. 7 and 8).

The indictment then alleged overt acts in furtherance of the conspiracy.

After disposition of the pre-trial motions, the jury was impaneled on February 1, 1952. One defendant (Mary Bernadette Doyle) was severed because of illness. The Government presented its case through the testimony of twenty-one witnesses, who had been either former *bona fide* members of the Communist Party or had joined the Party at the instigation of the Federal Bureau of Investigation, and through the intro-

duction of books, articles, etc., which set forth the policies and program of the Party, and paralleled the proof in the *Dennis* case. All but four of the defendants (Schneiderman, Yates, Stack and Carlson) rested their case without putting in any evidence. Except for the brief testimony of two witnesses and a deposition, the defense consisted of the testimony of Yates concerning her understanding of the Communist Party program. The jury deliberated for six days and, on August 5, 1952, returned a verdict of guilty as to all defendants. On August 7, 1952, the court entered the judgments of conviction.

The judgments were affirmed by the Court of Appeals on March 17, 1955 (Pet. App. 46).

THE GOVERNMENT'S EVIDENCE

The dominant role of the petitioners in organizing and directing the Communist Party in California is illustrated in the following summary of their functioning in the Communist Party apparatus:

> WILLIAM SCHNEIDERMAN—Active since 1922; Organizational Secretary of the California District in 1930; also in 1930, District Organizer in Connecticut; 1931 to 1934, Organizer, Minnesota District. In 1934, American Party representative to Communist International (C. I.) and lecturer at the Lenin Institute in Moscow; attended Seventh World Congress of the

Communist International (A. 333–340;[1] Ex. MM–1 p. 95); District Organizer or Chairman of California Party, 1935 until 1951 and member of District Board or Committee (A. 2, 446, 459; Tr. 301); attended National Party conventions in 1925, 1930, 1932, 1934, 1936, 1938, 1940, 1945, 1948; member of National Committee, 1934 to 1939, 1940, 1944, 1945 to 1948, and alternate member in 1950 (Exs. MM–1 pp. 91–98; A. 44, 57, 115–116, 132, 404, 598, 605; Tr. 301); attended various meetings of the National Committee since 1939 (Tr. 5449–5501); attended the California conventions since 1945 (A. 14–16, 112–113, 127–129, 145–147, 580–581).

OLETA O'CONNOR YATES—Active since 1933 (Tr. 455, 10250); since 1936 Organizer or Chairman of the San Francisco County Party and a member of the California District Committee or Board (A. 6, 8, 126–127, 147, 378, 418; Tr. 455, 458, 3842, 5456); attended secret District Board or Committee meetings from 1944 until 1949 (A. 223–241; 358–361; Tr. 7771–7780); alternate member of National Committee in 1944 (A. 132); attended at least three National Conventions, including those in 1936 and 1944 (A. 8, 429); attended California Party

[1] Excerpts from the reporter's transcript and from the exhibits in evidence were printed in two volumes as an appendix to the Government's brief in the Court of Appeals. References to pages of this appendix are referred to as, for example, "A. 128." References to the reporter's typewritten transcript of the trial are referred to as "Tr."

conventions since 1945 (A. 14–16; 403–404; Tr. 616–621); State Organizational Secretary since 1950 (A. 393–394).

HENRY STEINBERG—As early as 1936 was attending Young Communist League (YCL) meetings in Los Angeles; in 1940 and 1942 was functioning on the Los Angeles County Committee; it was a function of this committee to receive a report on all phases of the Party teaching in Party schools (A. 256–258); at such a 1940 committee meeting he participated (along with Philip Connelly) in a discussion of means for implementing the Party policy of "Don't support the imperialist war"[4] (A. 247–248, 256–260); in 1946 or 1947 was Educational Director of Los Angeles County (A. 138–139); in 1950 was Legislative Director of Los Angeles County (A. 455).

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[4] Up to 1941, during the period of the Soviet pact with Hitler, the war was characterized by the Party as one for imperialist objectives and therefore an unjust war (A. 275, 572, 592, 594, 602; Tr. 8652). The characterization of the war in this period as unjust, which could not be supported, was not an idle statement by the Party. The fundamental Marxist-Leninist strategy of the Party in a period of "unjust" war has been repeatedly cited by the Party (See Exs. 93, 213, 450, 613, 626) from the *History of the C. P. S. U.* (Ex. 28, pp. 167–168; A. 495). In respect to unjust wars, the *History* states that the program of "converting the imperialist war into a civil war" and "the defeat of one's own government in the imperialist war" were put forth as slogans of action (*ibid.*, p. 167).

When the Soviet Union was invaded by Germany in June 1941, the "character" of the war changed; the war became a "just" war and the Party called on all countries to unite to destroy Fascism (A. 255–256, 274–275).

LORETTA STARVUS STACK—In 1932 attended the Lenin Institute in Moscow;[5] in 1934, member of District Committee of YCL in Philadelphia (A. 213–223; Tr. 5354–5387, 5760–5761); attended 1945 National Convention (A. 72–73); attended various National Committee Plenums (A. 72); attended 1946 and 1948 California Conventions (A. 29–30, 580); from 1945 to 1950 was Secretary or Organizational Secretary of the California Party, and as such had an office at Party headquarters (A. 238, 364–365, 446–452; Ex. 315); from 1947 to 1949, attended secret meetings of the District Board or Committee (A. 223–231); and at least in 1945 and in 1950 was a member of the California District Committee (A. 124–125, 130, 418; Ex. 398). Yates testified that in connection with Party duties she had been in contact with Stack quite often in the five years preceding 1952 (A. 396).

FRANK SPECTOR—Was a "pioneer leader of the Communist Party in Los Angeles" (Ex. 611); was in Moscow in 1934 (A. 332); in 1935 was sent from New York to be San Francisco County Organizer or Secretary and also attended YCL State Committee meetings (A. 5–6, 12, 243–244); in 1937 was San Francisco County Organizer

[5] Stack received instructions at the Lenin school concerning the use of automobiles, streetcars and buses as barricades to protect the revolutionists in their fighting, in the use of bayonets, and in the duty to set up an illegal, underground Party apparatus (A. 216–217).

and from 1937 to 1940 was attending California District meetings (A. 6, 9, 12); in 1946 was a Los Angeles Party teacher; in 1949 was designated as an instructor at a Party school (A. 297, 307–310); in 1947 was in charge of expulsion proceedings against a Party member (A. 310–312); in 1950 was Southern Division Organizer of Los Angeles County (A. 292–294).

'AL RICHMOND—In 1931 was Organizational Secretary of the YCL in Philadelphia; in 1932 was on the Editorial Board of the *Daily Worker* and was assigned to the Waterfront Fraction of the Party (A. 211–213); in 1937 was made Editor of the *People's World* by the Party's National Committee (A. 10; Ex. 636) and remained as such until 1952 (Tr. 11324); in 1946, as editor, he stressed the necessity for the Marxist-Leninist approach in every issue of the paper (Tr. 3953–3954); and in 1948 addressed the State Convention concerning the necessity for the State Board reviewing the *People's World's* content and line and for the further integration of the staff of the paper in the Party Committees (A. 580–581; Ex. 186); between 1946 and 1949 attended secret sessions of the California State Board or Committee (A. 223–231, 368); was designated by the State Committee as a member of the 1950 pre-convention committee (Ex. 181 p. 1); in 1950 and 1951 was addressing Party conventions as a representative of the State Committee

and as Editor of the *People's World* (A. 110–113).

ALBERT JASON LIMA—Was an active Communist at least since 1940 (A. 452–458); in 1944 member of District Committee (Tr. 3842); attended 1945 National Convention (Tr. 2037); from 1945 until at least 1948 had offices in State headquarters and was California State Field Organizer (A. 12, 362–364; Ex. 315); from 1945 to 1948 was a member of the National Committee (A. 598; Ex. EA); from 1947 to 1949 attended secret meetings of the State Board (A. 223–231); in 1947 was also Assistant State Organizational Secretary (Ex. EA); and in 1949 was Secretary of the California Party (A. 447); attended the 1950 West Oakland Convention of the Party; delegate to the 1950 State Convention; in 1951 was in charge of proceedings at the East Bay Convention; in 1950 and 1951 was Chairman of the East Bay Region (A. 109–114; Tr. 3574–3575).

CARL RUDE LAMBERT—From 1935 until at least 1950 was head of the Party Control and Security Commission and was in charge of Party security matters and the discipline and expulsion of Party members (A. 12, 27–28, 148–153, 235–236, 249–250, 327–329; Tr. 7617, 7620); in 1936 was attending underground meetings of the Los Angeles YCL (A. 262–264); from 1939 to 1949 was Assistant Treasurer and Treasurer for the California Party (A. 446–449), and as such maintained an office at

State headquarters during at least 1944 and 1945 (A. 364); attended the 1945 California State Convention (A. 14); from 1945 to 1949 attended secret State Board meetings of the Communist Party (A. 223–231, 359).

Rose Chernin Kusnitz—In 1943 was Section Organizer of the Bronx Section in New York (A. 317); in 1945 attended the New York State Convention (A. 45); in 1946 was in Los Angeles attending Party meetings which were concerned with the immediate starting of Marxist training (A. 133–135) and where it was stated that Marxism could succeed only through the support of the Soviet Union (A. 135–136); in 1948 and 1949, functioned as Section Organizational Secretary of the 66th Assembly District Section and as Organizer of the West Jefferson Section of Los Angeles County and as such wrote for the Party's 1948 convention bulletin concerning her section's activities in conducting a leadership training course and in recruiting new members (A. 356, 581–582); from 1949 functioned as Organizational Secretary of the Midtown Division (A. 356–357).

Ernest Otto Fox—As early as 1935 was the Party's Seattle Organizer (A. 10); before 1948 and up to 1949 regularly attended secret State Board or Committee meetings (A. 223–231, 366–368); in 1947 and 1948 was Chairman of the Warehouse Branch (A. 283; Tr. 4394–4395); in 1948 stated that he had attended a secret National

Party School and had been a delegate to a New York Party convention (A. 286; Tr. 6598–6603); in 1948 was Chairman of the Haskell Section (A. 283–284); from 1949 to 1951 was Organizer of the Waterfront or Maritime Section in San Francisco (A. 288, 579; Tr. 2832).

BEN DOBBS—Member of YCL since 1932; from 1935 to 1939 attended State Committee and underground meetings and occupied executive positions in YCL (A. 11, 243–244, 247, 250, 258, 262, 264, 595; Tr. 6136–6137); in 1936 was attending Party Executive Committee meetings (Tr. 1232–1233); before 1948 regularly attended secret State Board or Committee meetings (A. 368, 376); in 1948 lectured at a Party school (A. 193–196; Tr. 5014–5018); and was connected with the 1950 Marxist Institute (A. 96–97); from 1946 to 1949 was the Party's Labor Secretary for Los Angeles County (A. 137, 208–211, 289–290; Exs. FO p. 3, 159B, 407, 737; Tr. 3937–3939, 5152–5156); from 1949 to at least 1950 was Los Angeles County Organizational Secretary (A. 108–109, 292–294); was still a Los Angeles County Party officer in 1951 (A. 451).

PHILIP CONNELLY—As early as 1938 was participating in Party caucuses in Toronto with the head of the Canadian Communist Party[6] (A. 344–346); in 1940 and 1941 had functioned on the Los Angeles County Committee (A. 247–254); in 1941 at such a committee meeting he discussed ways of organ-

[6] See *Rex* v. *Buck* (1932) 3 D. L. R. 97.

izing the workers in steel, aircraft and shipyards to build up sentiment against the country's war effort in furtherance of the Party's mobilization to brand World War II as an imperialistic war and to defend the Soviet Union (A. 251–252); as implementation of the foregoing, mobilized support for a strike at the North American Aviation Company where the Government had threatened to bring in troops to settle the strike (A. 252–253); was attending secret State Board or Committee meetings at least between 1945 and 1948 (A. 372–374; Tr. 7825–7830); in 1947 and 1950 was connected with Los Angeles County Party clubs, and in 1947 participated in a meeting devoted to the Communist Party going underground (A. 295, 329–332); from at least 1949 was Los Angeles Editor of the *People's World* (A. 204–205, 294–295, 406; Ex. 736).

DOROTHY HEALEY CONNELLY[1]—As early as 1933 was in the YCL and in 1936 was attending Los Angeles County YCL underground meetings (A. 243, 262–264); attended the 1945 National Convention and 1945 California Conventions; in 1945 and 1946 was a member of the California State Committee and Organizational Secretary of the Los Angeles County Party (A. 44, 124–125, 130–131, 374–375; Exs. 321, 398, 415); after 1945 was often at State Headquarters, and in 1945 and 1948 attended

[1] She was generally known in the Communist Party as Dorothy Healey, and most of the references to her in the evidence are under that name.

secret State Board meetings (A. 231, 375); in 1948 attended various Los Angeles Party Conventions and was a delegate to the State Convention (A. 92, 291; Ex. FO); in 1949 was at National Headquarters at a National Committee plenum and also in connection with underground operations (A. 64–68); continued as Organizational Secretary until 1949 (Ex. FO, 407; A. 289–290); 1949 to 1951 was Chairman of the Los Angeles County Party (A. 291–292, 450–451).

FRANK CARLSON—Was active in YCL 1935 to 1938; was its California Director in 1935 and on its State Committee in 1937; attended its underground meetings, its National Convention and its State Board meetings (A. 11, 244–246, 250; Tr. 6227); attended 1945 California convention (A. 14); in 1946 attended secret State Board meetings of the Party (A. 357–361), at which time he had an office at State headquarters (A. 358–365); in 1946 was contact man for the San Diego Party (A. 30–31; Tr. 1346); in 1947 was sent by the National Committee as Organizer in Wisconsin (A. 276–277, 280, 365; Ex. 729); in 1948 was a Los Angeles County functionary (A. 186); in 1949 was Los Angeles County Organizer (A. 84); and in 1951 was meeting with Yates at Los Angeles headquarters on Party business (A. 394–396).

Yates testified that the California Party functioned under the leadership of the State Committee (A. 393). She further testified that in

1951 the California Party had six or seven thousand members (A. 409). Attending secret California State Board or Committee meetings from 1944 to 1949 were Schneiderman, Lambert, Yates, Fox, Richmond, Healey, Dobbs, Carlson, Connelly, Stack and Lima (A. 224–233, 356–376, 415–416; Tr. 7825–7830). Yates refused to answer as to which of her fellow defendants, other than Schneiderman, Stack and herself, were members of the California State Committee in 1950 (A. 418–419). Schneiderman, Yates, Stack, Lima, Lambert and Richmond have worked partially or exclusively on the state or district level. Stack, Lima, Schneiderman, Yates, Richmond, Lambert, Lima and Fox were operating together in their capacities as the controlling Communist Party officials in the San Francisco area (A. 106–115, 145–146, 149–153, 235–237, 284, 369–372). Healey, Dobbs, Carlson, Lambert, Spector, Connelly, Stack, Steinberg, Schneiderman, Yates and Kusnitz similarly were operating together as the controlling Party officials in Los Angeles [8] (A. 84, 92–99, 127–131, 133–138, 140–142, 186–192, 203–207, 289–293, 295, 305–307, 315–316, 329–332, 356–357, 446–459). Steinberg, Healey, Schneiderman, Richmond, Stack and Lambert were also operating in San Diego (A. 29–31, 35). Carlson was the San Diego Party contact in Los Angeles (A. 31).

[8] Carlson, Spector, Richmond, Steinberg and Healey were also working together in the California apparatus of the YCL as early as the '30's (A. 262–263).

Petitioners Schneiderman, Yates and Lima have been on the National Committee, and a number of petitioners have attended national conventions and national committee meetings with the *Dennis* defendants (A. 7, 44–52, 66–68, 72, 115–116, 131–132, 404–405, 598; Ex. MM–1).

The extent of the central control over the California Party organization is seen in the admissions of petitioner Yates. Her duties as State organizational secretary functioning under the State Committee included organizing recruiting drives in order to build the Communist Party into a bigger organization; checking on the payment of dues; giving "help" to the various subdivisions of the Communist Party, that is, the county and club groups; preparation (with Schneiderman) of study outlines used in Party schools; and contacting other leaders of the Communist Party. While Yates admitted that the latter included regular communication with Schneiderman, Stack, Carlson and the Los Angeles Party leaders, she refused to name the other defendants with whom she worked in connection with her Party duties (A. 393–396, 403; see also A. 30, 290, 388).

Control of Party operations by the conspirators was exercised by means of the Party principle of democratic centralism. Petitioner Yates stated that "democratic centralism, as I understand it, is the basic principle upon which the Communist Party organization is founded" (A. 388; see also Ex. 161). It was derived from the Communist

Party of the Soviet Union, which insisted upon the "strictest and truly iron discipline" (Ex. 1 p. 118) and required: "That all decisions of higher bodies shall be absolutely binding on lower bodies and on all Party members." (Ex. 28 p. 198). This meant in the California Party that the local units were controlled by the county leadership, who in turn were governed by the state leadership and the national leadership (A. 9, 17, 26, 32–33, 36, 173, 196–197, 256–257, 320, 403; Ex. 161 p. 2, Ex. MF).

Iron control was maintained by frequent purging[9] of members who failed to follow the Party line orders of the conspirators (A. 28–29, 53–55, 71, 157–158, 201–202, 235–237, 310–313, 322, 328, 586–587; Ex. 153 pp. 19–20). At the direction of the National Board, a San Francisco "Left-Sectarian" group was expelled[10] for "anti-Party

[9] A glimpse of the Party's purpose is seen in Lambert's statement that they were "purging the Party['s] membership for emergency or revolution" (A. 328).

[10] At a Party meeting attended by Yates, Lambert and Lima, Schneiderman reviewed the San Francisco expulsions of the Left-Sectarians, stating that "they were like the horse that was too far ahead of the cart, and the party did stand for revolution, he wanted to assure the members of that"; that "they were on a purely Marxist-Leninist line"; that "he doubted if most of the members realized the seriousness of revolution and that revolution meant bloodshed and tragedy and the loss of lives and property, and that these things were expendable in the long run in the fight for socialism" (A. 146–147, 172–173).

activity" consisting of failure to follow Party orders in an ILWU strike; and Yates warned against further association with these expelled people. When a *People's World* staff member defended them as sound Party members and good trade unionists, he was expelled (Ex. 639 p. 1103; A. 151–153, 157–158). Subsequently, one Rosenbaum was also expelled, with Yates and Fox participating, for the offense of associating with the expellees.[11] Like a row of dominoes, another Party member, in turn, was admonished by his club chairman for associating with Rosenbaum and was told that he would have to make his choice, either with the Party or against it; that the Party would choose his friends and the persons with whom he associated (A. 147–150, 158–159).

Another manifestation of the working of the principle of democratic centralism occurred when petitioners and other Party functionaries went to distant parts of the country or to various parts of the California district to carry out their Party

[11] Fox reprimanded Rosenbaum for claiming that the Party was still influenced by the Browder policies, and declared that the Party was a revolutionary party but that it "was not going to stick its neck out" and get its "head chopped off." Fox further stated that he "wanted to see the overthrow of this lousy system just as much as anybody else present, but there was a time and place for militant action and it had not arrived yet" (A. 150).

duties on orders of their superiors [12] (A. 2–3, 10, 12, 26, 31–32, 42, 186, 276, 285, 341; Tr. 2060; Ex. 636).

In adherence to the requirement of the Communist International that "all organs of the press belonging to the Party must be edited by reliable Communists who have proved their loyalty to the cause of the proletarian revolution" (A. 566), the Central (National) Committee, in 1937, selected Richmond to be managing editor of the *People's World* (Ex. 636; A. 10); Connelly in recent years has been its Los Angeles Editor (A. 406). The position of editor has always been a full-time position in the Party, and lesser offices are likewise Party positions (A. 107, 112–113, 284, 294–295, 341, 570, 580–581; Ex. MF p. 15; Tr. 3833).

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[12] See Ex. 61 p. 112 (A. 516): "A professional revolutionist is a highly developed comrade, trained in revolutionary theory and practice, tested in struggles, who gives his whole life to the fight for the interests of his own class. A professional revolutionist is ready to go whenever and wherever the Party sends him. * * * If the class struggle demands it, he will leave his family for months, even years."

Compare Steve Nelson's praise of Schneiderman as a person who had given his whole life to the Party and who fitted Lenin's definition of a professional revolutionist (A. 15).

Stack, in speaking of her role in the Party in relation to her family, said that the Party should occupy the highest place and should take precedence over family life, which was second to the Party's program. She compared the role played by women in bringing about the Russian revolution, stating that women "should take up arms side by side with men." (A. 106–107, 118–119.)

The Party, following the experience of the Russian Party, regards its newspapers as necessary for achieving the proletarian revolution. The Tenth Convention of the American Communist Party in 1938 described the *People's World* and other Party newspapers "as the indispensable instrument for realizing the present objectives and historic aims of the working class movement." (Ex. J p. 17; Tr. 1248.) It is a Marxist-Leninist tenet that "preparation for the dictatorship of the proletariat will be impossible" without a "Communist press that will enlist all the masses" (A. 566). In 1948, Dobbs twice described the function of the *People's World* by comparison with the role that the outlawed *Pravda* had played in Russia where it was used to disseminate information and issue instructions to members of the underground revolutionary movement, stating that the *People's World* performed a similar function over here. Dobbs referred the members to the *History of the CPSU* which states that "the Party trained a new generation of revolutionary workers—the Pravdists" who "subsequently formed the core of the Bolshevik Party during the Revolution of October 1917" (A. 191, 194; Ex. 28 p. 159).

The *People's World* editors regularly were present at the secret State Board or Committee meetings; when the District Board or Committee arrived at any decision on political or organizational matters, an editorial or some pertinent

article about that particular subject would automatically follow in the next issue of the paper. According to Richmond, each issue of the paper was required to have the Marxist-Leninist approach. Its editorials were a "guide to action from the State and County Committees" (A. 5, 10, 18, 224–233, 367–368, 373–374, 387–388; Tr. 3954; Ex. MF p. 15). It was used as a basis for educational discussions (A. 25, 37). Party meetings were regularly held to raise funds for it and to increase its circulation (A. 34, 95–96, 98, 234–235, 253–255, 292–294). It was one of the means used to recruit members (A. 589; Tr. 1586). The Party regularly exercised discipline, to the point of expulsion, over its *People's World* functionaries who failed to live up to the Party's Marxist-Leninist tenets (A. 184–186, 314–315, 584–587).

The importance of the *People's World* in achieving the Party purposes is seen in the statement of Schneiderman in 1936 when, in discharging an editor of the Party paper because of his dilettante attitude, he reminded the paper's staff that the aims of the Communist Party were still to achieve the overthrow of the existing government and to achieve a revolution in the United States and seizure of power by the Communist Party, and that the petty bourgeois tendencies that existed among some members of the staff might incline some members to forget that ultimate aim (A. 342–343, 348–349; Tr. 7731–7733).

In 1945, the Party leaders re-established the program of concentrating the Party's recruitment activities on workers in key, basic industries (Ex. 55 pp. 794, 805, 809, 813–815). Admittedly, petitioners have followed this policy since then (A. 389). "Basic industries are those upon which the whole economic system depends. They include: 1. Those which produce material for production, like steel, mining, oil, chemicals; 2. Those which deliver material to the place of production or consumption, like railroad, trucking, marine, etc. 3. Those which produce power for running the wheels of industry, electric power plants, steam and hydro-electric plants, etc." (A. 514–515). Winston said that the Party must be built in key towns and key industries such as packing, auto, railroad and maritime; that "our concentration policy should run like a red thread through all phases of Party work" (A. 600–601). Healey told Party members that they must concentrate on the recruiting of industrial workers, that is, "workers in the basic industries such as the steel industry, the auto industry, the rubber industry, the oil industry, transportation, coal mining" and that "all strikes in basic industries must be Communist-led" (A. 133, 305–306). A club chairman was told by the Los Angeles County Committee that the National Committee had directed that steel, auto, mining, electrical, maritime and railroad would be the key industries for concentration; that the Los Angeles County

Committee had chosen the local aircraft industries for concentration by certain clubs, and the oil industry by other clubs (A. 296–297). In San Francisco, the Party was concentrating on transportation (Tr. 5458–5459).

The importance of the concentration policy to the proletarian revolution is seen in the instruction at the Party's 1941 National Training School that to achieve the proletarian revolution and the dictatorship of the proletariat it was not necessary to have a numerically large Communist Party, but rather one that can influence the "decisive sections" of the American working class[14] (A. 58–60). Thus, the *History of the CPSU* (Ex. 28) teaches that the first positions occupied in the 1917 revolution were the key transportation and communication facilities, *i. e.*, "the railway stations, post offices, telegraph office, the Ministries and the State Bank" (A. 497; Ex. 28 p. 208).

An underground apparatus has long been recognized as a Party requirement; thus, the Conditions of Affiliation the Communist International stated: "In nearly all countries in Europe and America the class struggle is entering the state of civil war. Under these circumstances, the Communists can have no confidence in bourgeois legality. They must everywhere create a

[14] Stack told the 1948 California convention that building the Party among industrial workers was "basic in the achievement of our political objectives" (Ex. 186 p. 3).

duplicate illegal apparatus, which, at the decisive moment, could help the Party to perform its duty to the revolution" (A. 566; see also A. 521, 529–533).

From 1948 to 1950,[14] the national leaders were busy setting up the Party's underground structure, the plan for which Foster had brought back from Europe (A. 61–70, 76–77; Tr. 2254–2259, 2282–2289, 2324–2334). The underground Party members were to be placed into small groups operating at different levels, with any one member knowing only one person in another group, thus preserving the functioning of the underground apparatus (Tr. 2327–2334). The Party bought printing or mimeographing machines; it made plans to store paper supplies, prepare hiding places and contact places for Party leaders, furnish documents to establish new identities for Party leaders,[15] and to set up short-wave radio

[14] The Party has had a long history of underground operation and in the '30's many of these petitioners were engaged in underground Party activity (A. 262–264, 351, 521).

[15] That the program was successful is indicated when Thompson, in charge of this underground plan and one of four *Dennis* fugitives, escaped apprehension for three years and made use of this underground paraphernalia, such as secret hiding places and false identification documents. Indeed Thompson's hiding place was in California, in petitioners' bailiwick. *United States* v. *Thompson*, 214 F. 2d 545 (C. A. 2), certiorari denied, 348 U. S. 841. A glimpse of the underground nature of the Party was seen in the refusal of the petitioner Yates to identify her fellow defendants during the course of her examination while a witness in this trial, even on pain of imprisonment (A. 395, *et seq.*).

transmitters capable of reaching the West Coast (A. 61–70).

In accordance with the national Party policy, the California Party proceeded on a program to go underground (A. 144, 159–160, 175–176, 331–332). California members were taught how the Party would operate with an underground organization (A. 122–123). Party clubs were broken up into squads where only the squad leader was in touch with the person in the next higher Party echelon (A. 110–111, 159–160, 286–287, 318–319). After a dismountable type of mimeograph machine was demonstrated to petitioner Healey at National Headquarters, preparations were made to secure machines in California, including also a hidden printing press which a Party member, who had been placed in the Party underground, was trained to operate in order to "move the masses of people in time of crisis" (A. 67–69, 85–91, 104–105, 160–161).

An employee of North American Aviation Corp. was excluded from open Party activity in the Los Angeles area in 1950 (A. 298–300). In 1948, Party cards were destroyed and thereafter no new ones were issued (A. 282–283, 301–302; Tr. 1537). Codes were arranged for various aspects of Party activity (A. 137–138, 236–237, 250, 298–300). Elaborate safeguards were taken to insure the secrecy of the State Board or Committee meetings (A. 225–233). Concealment of the location of

Party meetings was effected by rendezvous arrangements; members were admitted only after facing a panel and being identified (A. 92–95, 110–111, 144, 186–188, 192–194, 301–305).

Two overt acts in furtherance of the proscribed conspiracy to teach and to organize involved 1949 and 1950 Party meetings honoring Lenin, chief founder of the Soviet Union and developer of the theory and tactics of proletarian revolution and the dictatorship of the proletariat. At the 1949 meeting, Steinberg, as Chairman, made several speeches, while Dobbs made the main speech. The stated purpose of the meeting was to protest against the then current Smith Act trial in New York of the twelve national leaders of the Party—the *Dennis* defendants (A. 207–211; 460). At the 1950 meeting, Schneiderman, as State Party Chairman, demanded recognition for Red China and protested any armed intervention in China. There was an appeal for funds for the Party (A. 203–205; Ex. 159A). It was at such meetings that new Party members were recruited (Tr. 3763–3768). Moreover, the record was replete with the use of such "front" issues to interest outsiders and thereby gain recruits to the Party (e. g., A. 116–117, 161–162, 199–201, 220–221; Tr. 1584–1587, 4622).

Following the Communist Political Association (CPA) interlude in 1944–1945 under Browder's

leadership,[16] a 1945 National Convention of the Party was held, with most of the *Dennis* co-conspirators and petitioners Stack, Schneiderman, Lima and Healey attending (A. 44, 73). William Z. Foster told the 1945 Convention that Browder, under the flag of the CPA, was preaching anti-Marxism and quoted Duclos' statement that this was "a notorious revision of Marxism"; that Browder would have them throw away their Marxist-Leninist classics and had often expressed "his scorn for the 'old books' and 'old formulas' by which, of course, he [Browder] means Marxist-Leninist books and formulas" (Ex. 55, p. 784). The Convention dissolved the CPA and the same delegates reconstituted the Communist Party (A. 55). A constitution was adopted basing the Party

[16] The CPA had existed in 1944–1945 while the United States and the U. S. S. R. were war allies. When the war in Europe was coming to an end, French Communist leader Jacques Duclos published an article in France condemning the Browder program of class peace as reflected in the CPA as being "notorious revisionism" of Marxism-Leninism (Exs. 42, 442, 650). Immediately on this signal, the Party leaders began a series of resolutions and statements echoing Duclos' criticism and resulting in the 1945 Convention (Ex. 42 pp. 579–590, 629–632).

Petitioner Yates, on the CPA National Committee, testified that she understood the Party was not abandoning the principles of Marxism-Leninism during the CPA period and "did not until later realize that I had helped to distort them" (A. 390). A witness, in characterizing the CPA period, stated "The name was changed, the hat was turned around" (Tr. 926). Foster stated that the task during this period as he saw it had been "to keep the CPA, in fact, if not in name, the Communist Party" (Ex. 42 p. 655).

on Marxism-Leninism. Dennis told the Convention that in view of the foregoing provision "even the blind can see" that the principle of the dictatorship of the proletariat was to be found in the Party constitution (A. 56).

At the 1945 Convention and at subsequent national committee meetings, the Party leaders directed that there be instituted systematic and organized Marxist-Leninist education which was to be guided by the Party committees (A. 75, 568; Exs. 55 p. 788, 120, p. 1122). Dennis told the National Committee that Party members were to acquire a more profound grasp of the theory and lessons to be learned from the Marxist-Leninist classics and that the Party "must give more attention to the basic training of our cadres and to the Marxist-Leninist education of our new and old members" (A. 599–600). National Headquarters sent down a directive that the Party must set up study circles in the clubs to train its members in Marxism-Leninism (A. 197).

Coincidental with the 1945 National Convention, the California Party had conventions with Schneiderman, Lambert, Lima, Stack, Yates and Carlson present at the San Francisco session; and Schneiderman, Healey and Stack present at the Los Angeles session (A. 14–16, 127–131). During the same period, Kusnitz was attending the New York State Convention (A. 45). At the San Francisco Convention, Schneiderman told the delegates that "we were going back to funda-

mental theoretical books and we were to build our libraries on Marxism, Leninism and Stalinism" (A. 15). Preceding this, Schneiderman told the "whole top committee" that "we were not giving up the revolution and dictatorship of the proletariat; we were going back to the fundamentals of Marxism, Leninism and Stalinism" (A. 13). At the Los Angeles session, the Los Angeles County Board stated that the convention had been authorized "to bring our Party back on to the line of Marxism-Leninism"; and that "our Party has rededicated itself to what Comrade Duclos termed 'the victorious Marxist-Leninist doctrine' from which, as he so correctly warned us, we had 'so dangerously swerved'" (A. 584; Ex. 329 p. 4). Dorothy Healey urged the re-education of all Marxists (A. 130–131). In accepting her election to the State Board in 1945, Stack urged the reinstitution of Marxism-Leninism, stating that the American workers would be the grave-diggers of the capitalistic government (A. 130; *Cf.* Ex. 39 p. 21).

In the years following the 1945 Convention, Schneiderman told petitioners Dobbs and Kusnitz and, at various times, other Party leaders, that the reconstituted Party must embark on immediate Marxist training, especially of Party recruits (A. 133–135, 138, 145). Yates told petitioners Dobbs, Steinberg, Healey, Spector, Kusnitz and other Party members that it was only through Marxist-Leninist training and support of

the Soviet that a system of government such as in China, Yugoslavia, Czechoslovakia, etc., could be guaranteed (A. 135–136).

. The California Party set up a series of classes and schools that extended from 1946 to 1950 (A. 33–34, 38–39, 59–61, 84–85, 97, 107–108, 175, 182–183, 197–198, 297–298, 302, 397, 431–433; Tr. 2835–2836; Ex. 204). Additionally, the Party organized the sale and distribution of the Communist Party classics for independent self-study in mastering Marxism-Leninism (A. 36–37, 186–192, 196–197, 278, 289, 316, 320–321, 413). Members who occupied Party positions even on a club level were required to be especially well-grounded in the fundamentals of Marxism-Leninism (A. 201–202, 310–312, 315, 377–378, 586–587).

The principles of Marxism-Leninism were taught in these Party schools and classes. The content of this teaching was established by testimony as to the oral teaching of Party instructors and by documentary evidence consisting of written study outlines for self-study and class use. These outlines consist in large part of assigned reading in Marxist-Leninist texts which were introduced in evidence. Viewing the evidence strictly, the study outlines fall into two groups. The first group consists of three substantially identical study outlines (Exs. 93, 626 and 613; A. 612–620) prepared, respectively, by the National Headquarters of the Communist Party, the California state organization of the Party,

and the Los Angeles Party. According to petitioner Yates, they were used in California on a "state scale"; they were also used in classes in San Francisco, Los Angeles and San Diego (A. 33–34, 175, 431; Tr. 3866–3867). These are identical with the study outline introduced in the *Dennis* case (Ex. 9 X Z) which was used by the Government in that case in its brief to this Court (pp. 117–140) in illustration of the Party's Marxist-Leninist program. These three outlines were used in Party schools and classes in California following the reconstitution of the Party in 1945. While the evidence does not affirmatively show their use in California later than 1946, it does show that they were used in New York as late as 1950 (A. 61). The second group consists of study outlines (Exs. 163, 450, 201, 213, 214; A. 620–640) used by the California Party in Marxist institutes conducted in Los Angeles and San Francisco in 1949–1950 (A. 85, 96–98, 107, 108, 297, 298). Exhibit 163 was prepared by petitioners Yates and Schneiderman (A. 397).

Lesson I of the first group of outlines (Exs. 93, 613 and 626) is an introduction to Marxist-Leninist theory. It sets forth the Leninist slogans, "Without a revolutionary theory there can be no revolutionary movement" and "Our teaching is not a dogma but a guide to action," as showing that Marxist-Leninist theory defines the Party's methods and objectives.

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At a class for new members the Party instructor read the following from *Problems of Leninism* (Ex. 146, pp. 19–20) (assigned for study in lesson VII of the outlines) and told the neophytes that both Lenin and Stalin had there agreed that the change of government in the United States could not occur peacefully, that there must be a violent overthrow of the government and a complete smashing of the capitalistic processes (A. 182–183):

> Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?
>
> Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution.

A San Diego school using the outline (Ex. 626) was taught that a precondition was a Communist Party, "to lead the revolution after the armies, navies and the police force, and so on and so forth, had been crushed; that it was very necessary that there would be a vanguard party, namely, the Communist Party, to lead these

people after and during such an uprising" (Tr. 1786).[17]

The assignment from *State and Revolution,* for lesson IV of the outlines, is an excerpt in which the view that Marx contemplated that the revolution would be a gradual development rather than "a seizure of power" is dismissed by Lenin as a "vulgar interpretation"; "as a matter of fact, *exactly the opposite is the case.* Marx's idea is that the working class must *break up, shatter* the 'ready-made state machinery,' and not confine itself to merely taking possession of it" (Ex. 11, p. 33). Marx's confinement of violent destruction of the state to the European continent is rejected by Lenin in view of subsequent developments in England and the United States (Ex. 11, p. 34):[18]

[17] Compare the similar statements in the reading assigned from *Problems of Leninism* (Ex. 146, pp. 31–38) and *Foundations of Leninism* (Ex. 1, pp. 109–111) and Stack's statement that the Communist Party was the instrument through which the capitalist government would be overthrown (A. 29–30). This was in harmony with what was taught at the 1941 National Training School that among the conditions for the proletarian revolution was a strong Communist Party in the United States "not necessarily large and big numerically, but a Party that has influence, influence that it can exert to influence the decisive sections of the American working class" (A. 59–60).

[18] See also the reading assigned in *Foundations of Leninism* (Ex. 1, pp. 55–56) where Stalin also says that America is no exception to the law of violent proletarian revolution.

Compare the statement of old-time Party member "Mother Bloor" to Schneiderman, Yates, Lambert and other members that they "were on the threshold of the revolution," that she

> Today, in 1917, in the epoch of the first great imperialist war, this exception made by Marx is no longer valid. Both England and America, the greatest and last representatives of Anglo-Saxon "liberty" in the sense of the absence of militarism and bureaucracy, have today plunged headlong into the all-European dirty, bloody morass of military bureaucratic institutions to which everything is subordinated and which trample everything under foot. Today, both in England and in America, the "precondition of any real people's revolution" is the *break-up,* the *shattering* of the ready-made state machinery" (brought in those countries, between 1914 and 1917, to general "European" imperialist perfection).

In connection with a question at a club educational as to how socialism could be brought about, a Party teacher, in pointing out that a majority was not needed, stated that once in power, the proletariat had the obligation to shatter the state machinery and thereafter they could begin to satisfy the demands of those whom they were seeking as allies; that "the actual taking over of the Government would be violent, and that there could be no chance of a peaceful overthrow" (A, 197–198). To buttress his statement, the teacher referred to *Problems of Leninism* (Ex. 146—cited in the outlines, Lesson VII):

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would "live to see the bloody battle through" and "there will be blood flowing in the streets" (A. 369–372).

There, Stalin says that the dictatorship is not a "popular," "elected" or "non-class" government, "and does not deceive either itself or others by talk about popular, elected [19] government, sanctified by the whole people." It is an alliance between the proletariat which has seized power and numerous non-proletarian workers (the farmers, intelligentsia, etc.) which is developed "in the circumstances of furious civil war" and for the purpose of completely overthrowing capital and suppressing the resistance of the bourgeoisie (*ibid.*, pp. 22–23).[20] The assertion that the proletarian revolution must depend on the majority of the population supporting it is quickly disposed of as the view of "the henchmen of the bourgeoisie." That support, say Lenin and Stalin, will come with a victorious revolution. Thus, the teacher read the following (*ibid.*, pp. 20–21):

> Let the revolutionary proletariat first overthrow the bourgeoisie, break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and sup-

[19] When Lambert was asked if the Party was planning revolution by bullets instead of ballots, Hursel Alexander answered for him, stating, "Just what the hell do you think we are purging the Party for?" (A. 329).

[20] Stack was taught at the Lenin Institute in Moscow, "that it was the duty of the students of their respective countries to work to overthrow their own Governments and to set up the dictatorship of the proletariat as a guarantee that the Government that was overthrown would not regain its power" (A. 218–219).

port of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters. * * *

"In order to win the majority of the population to its side," Lenin continues, "the proletariat must first of all overthrow the bourgeoisie and seize state power and, secondly, it must introduce Soviet rule, smash to pieces the old state apparatus, and thus at one blow undermine the rule, authority and influence of the bourgeoisie and of the petty-bourgeois compromisers in the ranks of the non-proletarian toiling masses. Thirdly, the proletariat must *completely and finally destroy* the influence of the bourgeoisie and of the petty-bourgeois compromisers among the *majority* of the non-proletarian toiling masses by the *revolutionary* satisfaction of their economic needs *at the expense of the exploiters.*"

In a discussion of the outline (Ex. 626), a class was told that a majority was not necessary for the revolution "that at a time when great stress, for instance, at the time of war amongst countries, it might be possible for the Communist Party of one of the warring countries to take advantage of such a situation and that under such circumstances, because so many of the people in this country would be deployed fighting a war, it would then be possible to cause internal strife and a civil war, and thereby it would be possible to bring into effect the dictatorship of the proletariat without the necessity of having a ma-

jority of the working class in favor of it at that particular time". (A. 38–39). The following from the reading assigned for Lesson VIII from *Foundations of Leninism* (Ex. 1, p. 22) was then read to the class (A. 40):

> Concerning the conditions for the seizure of power by the proletariat. The opportunists assert that the proletariat cannot and ought not to take power unless it constitutes a majority in the country. No proofs are adduced, for there are no proofs, either theoretical or practical, that can justify this absurd thesis. Let us assume that this is so, Lenin replies to these gentlemen of the Second International; but suppose a historical situation has arisen (a war, an agrarian crisis, etc.) in which the proletariat, constituting a minority of the population, has an opportunity to rally around itself the vast majority of the labouring masses; why should it not take power then?

In the final lesson (Lesson IX) in the outlines, the students are referred to *Strategy and Tactics* (Ex. 147) where the strategy of the revolution is set forth: When the masses are in a state of revolutionary ferment, and ready for action, the Party of the proletariat must lead the masses to a direct attack upon the bourgeois state. This it does by organizing mass action including "a combination of strikes and armed demonstrations and finally, the general strike conjointly with armed insurrection against the state power

of the bourgeoisie. The latter form of struggle, which is the supreme form, must be conducted according to the rules of war" (Ex. 147 p. 66; A. 527-528).

That the Party here regards the general strike as an integral part of the course to revolution is seen in the reference by a Party official in 1946 to the Communist-inspired San Francisco general strike of 1934.[21] The official read Engel's definition of revolution as being "the most authoritative thing possible; it is an act in which one section of the population imposes its will upon another section of the country by means of rifles, bayonets, cannon" (Ex. 492 p. 47, A. 541). She

[21] At a meeting in Moscow of the Communist International (CI) in 1934, the American Communist Party was ordered to start a general strike in San Francisco. Schneiderman, the American Party representative to the CI, in voting for the strike, stated that the situation was ripe for such a general strike, and agreed that a general strike would offer an excellent rehearsal for seizure of power in the United States by the American Communist Party (A. 336-339, 346-350). Later, the Party, in its publication, *The Communist*, claimed credit for the general strike which subsequently took place and considered it a success. The Party gave as a reason for the "incompleteness" of the strike the failure "to stop the bourgeois newspapers from publishing" and "failure of the workers in the communications systems, such as telephone and telegraph, to join in the strike;" except for this, "the entire struggle would have reached a higher political level, because the question of the ability of the capitalist State to function would have been far more critical for the bourgeoisie than it was" (Ex. 738; A. 607-610). As an aftermath, Schneiderman reminded Party members in 1936 that such general strikes were rehearsals for seizure of power by the Party and the working class (A. 340-342).

compared the violence that occurred in the Paris Commune with the 1934 San Francisco strike, stating that it was the closest thing that had ever happened in this country; "that here was an example where labor held power for a period of two or three days, and had the political development of the people been advanced, had the Party laid a proper background and proper foundation of education among the masses, that an incident like that can be transferred into the revolutionary period; that you can go from a strike into a revolutionary action without too much difficulty." The Party members were told "that was the reason why we must recruit and must point out the fallacies of capitalism; so that when the situation may arise in the future, that we would be much better prepared for action" (A. 153–155).

The second group of outlines which were used in the Marxist Institutes held in Los Angeles and San Francisco in 1949–1950 (Exs. 163, 450, 201, 213, 214; A. 620–644) also referred the students to substantially the same Marxist-Leninist classics as had the earlier outlines [22] (e. g. Tr. 2749–2793).

[22] Nowhere have petitioners denied the use of these Marxist-Leninist texts as part of their program. Indeed, petitioner Yates admitted the use in the Party of the volumes of the "Little Lenin Library" containing most of the Marxist-Leninist texts, since "in the preamble to the Constitution it states that the Communist Party bases itself upon the principles of scientific socialism, Marxism-Leninism, the main principles of which are to be found in these so-called Classics" (A. 413–414).

And in at least one of the Institute schools the students were taught that the "pre-conditions" for the socialist revolution would have to be developed over a period of time, but as soon as conditions were set for socialism, the change would be a sudden and violent outburst (A. 119–120).

These outlines, however, prepared after the *Dennis* indictment, also referred to non-Marxist texts of an innocuous nature and contained statements disclaiming the use of force and violence. The evidence showed, nevertheless, that many of these non-Marxist texts were never used in the classes (A. 103–104). We have set out in full "Session" 8 of the outline (Ex. 163) prepared by Yates and Schneiderman which purports to renounce the use of force and violence (A. 622–626). Woven into this session, as examples of revolution, are "American Revolution of 1776, French Revolution, Russian Revolution in 1917" (A. 622), all examples of the use of force and violence in achieving power. Also used as an example was the so-called "eastern democracies following World War II". So that the students could be doubly sure that the Party leaders were not guilty of a "revisionism" of the Marxist-Leninist tenets of force and violence, the outlines set forth quotations from Marx and from American sources on the "right" of violent revolution (A. 623).

SUMMARY OF ARGUMENT

1. The evidence amply sustains the jury's verdict that the petitioners conspired with the *Dennis* defendants to teach and advocate, and to help to organize the Communist Party to teach and advocate the overthrow of the Government of the United States by force and violence. Petitioners are the principal organizers and leaders of the Communist Party in California. The evidence clearly established that they worked in close and disciplined concert to recruit members for the California Party, and organized classes and study groups to indoctrinate such members in the principles of Marxism-Leninism. Testimony as to the teaching of Party instructors in these classes and the written study outlines prepared and used in these classes, both immediately before and during the period covered by the indictment, constituted clear and convincing evidence that this Marxist-Leninist indoctrination as organized by petitioners included advocacy of the violent overthrow of the Government of the United States and that petitioners had conspired with the specific intent of bringing about such overthrow as speedily as circumstances would permit.

The First Amendment's guarantee of freedom of press did not preclude the conviction of petitioners Richmond and Connelly. As editors of *The People's World*, a publication established, supported and strictly controlled by the Com-

munist Party in California, they were convicted of playing active and leading roles in the overall conspiracy charged in the indictment.

2. Petitioners admit (Pet. 76) that the Government alleged and proved as overt acts the participation of petitioners Steinberg and Schneiderman in Lenin Memorial meetings conducted by the Communist Party in California in 1949 and 1950, respectively. Contrary to petitioners' apparent contention, such overt acts need not constitute crimes in themselves. *Braverman* v. *United States*, 317 U. S. 49, 53. Participation in meetings to strengthen and maintain the Communist Party obviously was in furtherance of the petitioners' conspiracy.

3. Petitioner Schneiderman contends that under principles of *res judicata* and collateral estoppel this Court's decision in *Schneiderman* v. *United States*, 320 U. S. 118, precluded the Government from litigating with him in this Smith Act prosecution issues relating to the methods and objectives of Marxism-Leninism and his understanding of them. It is clear that none of this Court's conclusions in the *Schneiderman* case as to the nature of Marxism-Leninism in 1927, or as to petitioner's beliefs and activities in 1927 "was a determination favorable to petitioner of the facts essential to conviction" under a Smith Act indictment returned in 1951. *Sealfon* v. *United States*, 332 U. S. 575, 578–579. Accordingly,

principles of *res judicata* or collateral estoppel have no application here.

4. It was not error for the trial judge to refuse to charge the jury that they could not convict unless they found that the petitioners intended that the teaching and advocacy of the violent overthrow of the government which was the object of the conspiracy would be couched in language reasonably and ordinarily calculated to incite persons to violent action to overthrow the government. Nothing in this Court's decision in *Dennis* v. *United States,* 341 U. S. 494, requires that such a specific charge as to "incitement" be given to the jury. The sole function of such a charge would be to draw a line between discussion protected by the First Amendment and the advocacy of political violence which Congress may prohibit. Here, the trial judge emphasized this distinction by instructing the jury that petitioners could not be convicted for opinions, beliefs, or predictions—but only for advocacy, and that before the jury could convict they must find that petitioners specifically intended to bring about the violent overthrow of the government as speedily as circumstances would permit.

Since such an instruction as to "incitement" was not required by *Dennis,* it is immaterial that the court below may have believed that it was the revision of 18 U. S. Code in 1948 which made such an instruction unnecessary.

5. It is not entirely clear that the trial judge made a finding that petitioners' conspiracy occurred in such a context of world conditions as to create a "clear and present danger" to vital interests of the United States. Such a finding involves a conclusion of law to be drawn by judges rather than by jurors. *Dennis* v. *United States,* 341 U. S. 494, 513, 515. If it was not made by the trial judge, it clearly was made by the court below, which found as had the Court of Appeals for the Second Circuit in *United States* v. *Flynn,* 216 F. 2d 354, certiorari denied, 348 U. S. 909, that world conditions in 1951 were not less dangerous than at the time of the *Dennis* trial.

6. The petitioners urge that the organization of the Communist Party was completed when it was first formally created with a constitution and officers and committees, and that the trial judge erred in instructing the jury that "organize" as used in the Smith Act "includes the recruiting of new members and the forming of new units" etc. To the contrary, by the "organize" clause of the Smith Act, Congress clearly sought to reach not merely those who create an organization on paper but also and primarily those who by continuous recruitment and indoctrination of members for illegal objectives create the real danger with which Congress is concerned. Petitioners' argument that Congress adopted the

Smith Act from the California Criminal Syndicalism Act and must be presumed to have adopted the California courts' prior construction of "organize" as including only the initial creation of an organization is without merit. For the legislative history of the Smith Act shows that it was largely modeled upon the New York criminal anarchy statute (involved in *Gitlow* v. *New York*, 268 U. S. 652) under which the New York courts had never so construed "organize" as used in that statute.

7. The trial judge did not abuse his discretion in denying petitioner's motion for a continuance because of the newspaper publication, before and in the first days of the six-months' trial, of Philbrick's articles describing his experiences in the Communist Party. The articles made no reference to petitioners, and the trial judge satisfied himself on voir dire that none of the jurors had read them.

Similarly, the trial judge did not err in denying a motion for a mistrial based upon publicity incident to the release by a Senate subcommittee of a pamphlet (furnished a month earlier at its request by the Federal Bureau of Investigation) concluding that the Communist Party advocates the violent overthrow of the Government of the United States. This pamphlet, consisting of statements of Communist leaders here and abroad, made no reference to any of the peti-

tioners. The petitioners complain that the trial judge erred in refusing to ask the jurors whether they had read or heard of the report, asserting that affirmative answers would have required a mistrial. To the contrary, jurors' knowledge of publicity adverse to a defendant does not create a presumption of prejudice. *Holt* v. *United States*, 218 U. S. 245, 250–251; *Finnegan* v. *United States*, 204 F. 2d 105, 110 (C. A. 8). Petitioners should not now be heard to complain since they rejected the trial judge's offer to ask the jurors whether they had read or heard of the report *and* if they felt that they had been influenced by it.

ARGUMENT

The petitioners, as the principal organizers and leaders of the Communist Party in California, have been convicted of conspiring with the defendants in *Dennis* v. *United States*, 341 U. S. 494, to teach and advocate, and to help to organize the Communist Party to teach and advocate, the violent overthrow of the Government of the United States. The petitioners' dominant role in the Communist Party in California is undisputed. Their convictions were based upon evidence closely paralleling that adduced in the *Dennis* case and upon the principles enunciated by this Court in that case. Their activities were carried on the same context of world conditions which in *Dennis* and in *United States* v. *Flynn*,

216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909, was held to justify the application of the Smith Act. Their convictions have been affirmed, and there is no occasion for further review by this Court.

1. *The sufficiency of the evidence.* Petitioners contend that as to each of them the evidence was insufficient to sustain their convictions under the conspiracy charged in the indictment, and that "Unless membership and officership in the Communist Party alone establish participation in the illegal conspiracy charged herein and the requisite specific intent, there is absolutely no basis for the conviction of these petitioners" (Pet. 47–76). We contend, to the contrary, that the evidence clearly supported the convictions in the following respects.

Petitioners do not deny, nor could they, that they have collectively organized, led and directed the Communist Party in California; in fact, no one of the petitioners seeks to dissassociate himself from the joint leadership of the California Party. It is established by the jury's verdict that what petitioners did jointly they did in agreement with the *Dennis* defendants—within the national framework of the Duclos-dictated reconstitution of the Communist Party in 1945. It is undisputed that petitioners (and their co-conspirators) collectively organized and directed the network of Party classes and study groups in Cali-

fornia,[23] and in which principles of Marxism-Leninism were taught. The admitted purpose of the advocacy which was the object of the conspiracy was to recruit followers and indoctrinate them in Marxist-Leninist principles—whatever they might be. As petitioner Yates put it, her duties as State organizational secretary "consisted of helping to organize recruiting drives in order to build the Communist Party and make it a bigger organization" (A. 393). The Marxist-Leninist texts used in these schools on their face advocate the use of violence to overthrow existing governments (including the Government of the United States) in favor of a proletarian dictatorship. Class and self-study outlines prepared and used by

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[23] Compare the statement of the *Dennis* defendant Davis who testified in that case, as follows:

> * * * I have a responsibility because of the fact that I am a member of the National Committee, a member of the National Board, and what is taught in our schools is determined by the policies which we are following at the particular time. * * * I have participated in discussions where the policies to be taught in the schools were outlined and decided. I have assisted in the preparation of outlines based upon decisions made by our National Committee. I have been to some schools; I have given a lecture here and there at a school, * * * and I have heard reports from Mr. Stachel who is our Educational Director, which reports were subject to the action and decision of the National Committee of the Communist Party. [*Dennis*, Joint Appendix, pp. 8441–8442.]

While the responsibility is no greater than in *Dennis*, petitioners' control is closer, since the evidence showed that most of the schools and classes were held in petitioners' California state and county Party organizations.

the Party in California between the reconstitution of the Party in 1945 and the *Dennis* indictment in 1948 specifically directed attention to the basic view of Communist leaders that they will obtain power only by physical violence, and amply supported the jury's finding that petitioners conspired with the requisite intent. Indeed, the requisite intent could be found from the more cautious teaching outlines, such as that prepared by Schneiderman and Yates, used in petitioners' Marxist institutes in 1949 and 1950, with their emphasis on the American, French and Russian revolutions, the experience of the east European "democracies" following World War II, and the alleged right of revolution. In brief, the agreement or concert of the petitioners is undisputed, and the jury's finding as to its illegal purpose and petitioners' intent is amply supported by proof of what petitioners actually did to further it.

Petitioners Richmond and Connelly have petitioned separately (Pet. No. 310) on the grounds of the insufficiency of the evidence as to them. Petitioners attempt to disguise their membership in the conspiracy by picturing their activity as the exercise of freedom of the press protected by the First Amendment. Under the charge of the trial judge, these petitioners were not convicted for editing a newspaper, but for membership in a conspiracy advocating the violent overthrow of the Government. The First Amendment does not protect the activities of newspaper editors if

those activities are an adjunct to a conspiracy such as that here charged. *United States* v. *Lebron*, 222 F. 2d 531, 536 (C. A. 2), pending on petition for certiorari, No. 139 Misc. The evidence showed that it is a Marxist-Leninist tenet that a Party newspaper is necessary to a successful revolution (*supra*, pp. 19–21). That these two petitioners were busy implementing this Party principle constitutes no basis for exempting them from the prohibitions of the Smith Act.

The activities of petitioners Richmond and Connelly in the conspiracy were no different from those of the other petitioners. They had been active in the State and County committees of the Party which, as we have shown, was where control over the Party apparatus, including Party newspapers, schools and classes was exercised. Their positions as editors do not insulate them from the consequences of the conspiracy any more than did the functioning in similar positions of the *Dennis* petitioners Davis and Gates.

2. *The sufficiency of the overt acts.* Petitioners concede that there was proof of two overt acts within the period (Nos. 13 and 16 in the indictment) consisting of the attendance of Steinberg at a Lenin Memorial meeting in 1949 and the attendance of Schneiderman at a Lenin Memorial meeting in 1950 (Pet. 76). However, they are apparently contending that neither of these acts involved any advocacy or teaching of political

violence, and therefore cannot constitute the overt acts required by the general conspiracy statute.

This Court has reiterated that "The overt act, without proof of which a charge of conspiracy cannot be submitted to the jury, may be that of only a single one of the conspirators and need not be itself a crime." *Braverman* v. *United States,* 317 U. S. 49, 53. While we assume that the required overt act must be pursuant to or in furtherance of the conspiracy, we submit that this condition was satisfied here by the leading roles played by Steinberg and Schneiderman at public meetings admittedly designed to strengthen the Communist Party (Statement, *supra,* p. 26).

3. *Schneiderman's res judicata contention.* Petitioner Schneiderman contends in his separate petition that, under principles of *res judicata* and collateral estoppel, the decision and judgment of this Court in *Schneiderman* v. *United States,* 320 U. S. 118, precluded the Government from relitigating with Schneiderman in this Smith Act prosecution issues relating to the nature, methods and objectives of Marxism-Leninism, or the nature of the principles of Marxism-Leninism as understood and taught by Schneiderman.

Schneiderman v. *United States,* 320 U. S. 118, decided by this Court in 1943, arose out of a civil proceeding brought by the United States to cancel Schneiderman's naturalization certificate granted in 1927 on the ground that in 1927 and the preced-

ing five years he had not behaved as a person "attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same" in that "during all of said times [Schneiderman] was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the [Communist Party], whose principles * * * advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence." We submit that none of this Court's conclusions in *Schneiderman* as to the nature, methods and purposes of Marxism-Leninism in 1927 or before, or as to the character of Schneiderman's beliefs, teaching and activities in 1927 or before, "was a determination favorable to petitioner of the facts essential to conviction" under the indictment in the instant case, which was returned in 1951 following the re-constitution of the Communist Party in 1945. *Sealfon* v. *United States*, 332 U. S. 575, 578–579.

4. *The charge.*[24] The trial judge instructed the jury that "It must also appear beyond a reasonable doubt from the evidence in the case that such defendant had the further specific intent to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstancies

[24] The instructions to the jury in this case are printed in 106 F. Supp. 927–940.

would permit." 106 F. Supp. at 939. However, petitioners contend (Pet. 21–29) that the trial judge erred in refusing to charge the jury that in order to convict they must find that the petitioners conspired with the intent that the teaching and advocacy contemplated by the conspiracy be by language reasonably and ordinarily calculated to incite persons to violent action to overthrow the government. We contend that such a specific instruction as to "incitement" is not required by this Court's decision in *Dennis* v. *United States, supra.*

As petitioners point out, the charges to the juries in the *Dennis* and *Flynn* cases and in *Frankfeld* v. *United States,* 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922, contained language suggesting that the teaching and advocacy of violent overthrow of the government which is prohibited by the Smith Act must be in "language reasonably and ordinarily calculated to incite persons to such action". See Judge Medina's charge in the *Dennis* case, quoted in 341 U. S. at 511–512. Indeed, since the charge in *Dennis* had withstood scrutiny by this Court, the government urged that similar language be included in the instructions to the jury in the instant case.

However, it is clear that nothing in the *Dennis* decision requires that Judge Medina's instructions be used verbatim in all other Smith Act prosecu-

tions. More important, this Court's opinions in *Dennis* show that the function of a charge with respect to language of incitement to political violence is simply to draw a clear distinction between discussion protected by the First Amendment and the advocacy of political violence which Congress may validly proscribe. Chief Justice Vinson's opinion pointed out that the Smith Act "is directed at advocacy, not discussion", and that Judge Medina "properly charged the jury that they could not convict if they found that petitioners did 'no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas.' * * *" and that such a charge "illustrates the meaning to be placed on those words". 341 U. S. at 502. Similarly, in his concurring opinion, Mr. Justice Frankfurter noted that "Throughout our decisions there has recurred a distinction between the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken," and "there is underlying validity in the distinction between advocacy and the interchange of ideas." 341 U. S. at 545, 546. Applying this distinction to the *Dennis* defendants, Mr. Justice Frankfurter concluded that "The object of the conspiracy before us is so clear that the chance of error in saying that the defendants conspired to advocate rather than to express ideas is slight." *Ibid.*

Accordingly, it is clear that while this Court has indicated that in a Smith Act prosecution the jury must be instructed as to the distinction between discussion of ideas and advocacy of political violence, it has never suggested that the distinction must be phrased in terms of incitement.

We submit that the distinction was sufficiently made by the trial judge's instruction that the jury could convict petitioners only if it found that they had conspired to advocate and to organize the Communist Party to advocate the violent overthrow of the government with the specific intent to cause or bring about such overthrow "as speedily as circumstances would permit." Conspiring to advocate such overthrow with intent to bring it about as soon as possible is indistinguishable from conspiring to so advocate with the intent that such advocacy be "by language reasonably and ordinarily calculated to incite persons to such action." Those who seek to cause the violent overthrow of the government as speedily as circumstances permit can scarcely assert that their advocacy of such overthrow is not intended to induce others to join in effectuating that purpose. Indeed, in classes and study groups organized by these petitioners they insist that "Our teaching is not a dogma but a guide to action" (see Statement, *supra*, p. 31). Under either form of instruction, the line is drawn between academic discussion of communism and advocacy of political violence.

Moreover, the trial judge went on at length to distinguish between a conspiracy "to advocate rather than to express ideas" in the following instruction (106 F. Supp. at 934):

> As used in the Smith Act and the indictment:
>
> (1) the word "advocate" means to urge or "to plead in favor of; * * * to support, vindicate, or recommend publicly * * *.";
>
> (2) the word "teach" means "to instruct * * * show how * * * to guide the studies of * * *";
>
> (3) the word "force" means the use of physical power other than the power of oral and written speech;
>
> (4) the word "violence" means the use of great and destructive force.
>
> The holding of a belief or opinion does not constitute advocacy or teaching. Hence the Smith Act does not prohibit persons who may believe that the violent overthrow and destruction of the Government of the United States is probable or inevitable from expressing that belief. Whether such belief be reasonable or unreasonable is immaterial. Prediction or prophecy is not advocacy.
>
> Any advocacy or teaching which does not include the urging of force and violence as the means of overthrowing and destroying the Government of the United States is not within the issue of the indictment here and can constitute no basis for any finding against the defendants.

> The kind of advocacy and teaching which is charged and upon which your verdict must be reached is not merely a desirability but a necessity that the Government of the United States be overthrown and destroyed by force and violence and not merely a propriety but a duty to overthrow and destroy the Government of the United States by force and violence.[25]

Thus, the trial judge forcefully instructed the jury that they could convict only if they found that the advocacy which was the object of the conspiracy was advocacy of the violent overthrow of the government—advocacy carried on with the purpose of inducing a sufficient number of people to effect such overthrow, rather than discussion or the expression of beliefs or predictions protected by the First Amendment.[26]

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[25] It is worthy of note that two other trial judges thought that an instruction almost exactly like the one here correctly defined the meaning of the term "advocacy". *Fujimoto* v. *United States*, No. 13951, and *Huff* v. *United States*, No. 14320, both pending on appeal to the Ninth Circuit.

The Government in the latter case offered an instruction on incitement similar to that in *Dennis* because the defendants in the instant case had already argued on appeal that it was error not to give the instruction. The *Huff* defendants specifically objected to the Government's proposed instruction stating that the trial judge, using the instruction under criticism here, "correctly states the law and correctly defines the Act and correctly analyzes the law in that regard." (*Huff*, Reporter's Transcript, pp. 13097–13099.) Those defendants of course have not raised this issue on appeal.

[26] The trial judge in this case went to greater lengths than did the *Dennis* trial judge to make sure that these petitioners were not convicted for language which was merely provoca-

It seems likely that petitioners' insistence upon the necessity for an instruction as to "incitement" is simply a veiled attempt to argue that the First Amendment precludes the application of the Smith Act to advocacy of the violent overthrow of the government until an attempt at such overthrow is "imminent". This contention that the entire recruitment and indoctrination phase of a totalitarian political movement is protected by the First Amendment was rejected by this Court in *Dennis* v. *United States,* 341 U. S. at 509–510.

Petitioners also assert (Pet. 29–35) that the court below sustained their convictions only by drawing erroneous conclusions as to the significance of the 1948 revision of 18 U. S. Code which deleted the special conspiracy provision of the Smith Act which was involved in the *Dennis* case, with the result that the indictment in the instant case charged a conspiracy under the general con-

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tive or challenging, or stirring, or disputatious. The trial judge explained to the jury the broad rights of defendants protected by the First Amendment "to hold, express, teach and advocate opinions." He charged that defendants have a right to criticize our system of Government and the Government itself, "even though the speaking or writing of such criticism may undermine confidence in the Government or cause or increase discontent." "They have the right also to criticize the foreign policy of the United States * * * and to praise the foreign policy of other governments * * *." The court further instructed that the right of freedom of expression included opinions spoken which seemed "crudely intemperate, or to contain falsehoods, or to be designed to embarrass the Government." 106 F. Supp. at 935.

spiracy provision (18 U. S. C. (1948 ed.) 371) to commit offenses under Section 2 of the Smith Act (18 U. S. C. (1948 ed.) 2385). The contention is without merit.

The court below thought that these petitioners had certain legal advantages over the *Dennis* defendants, such as the requirement under 18 U. S. C. 371 of proof of an overt act, that proof of membership or holding office in the Communist Party would not constitute "*per se*" a violation of the Smith Act in view of the enactment of Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)), and that petitioners were more particularly informed of the charge they had to meet by virtue of the inclusion in the indictment of an allegation of petitioners' specific intent to cause the violent overthrow of the Government "as speedily as the circumstances would permit." (Pet. App. 10–15.) The Court of Appeals believed that petitioners had the further advantage of access to the large body of standardized law and procedure developed under the general conspiracy statute, 18 U. S. C. 371 (Pet. App. 16).

The Government has never contended that the 1948 revision of 18 U. S. C. (or Section 4 (f) of the Internal Security Act) effected or was intended to effect a drastic change in the issues of a Smith Act prosecution. However, it is immaterial in this case whether the Court of Appeals was correct in its view that the 1948 revision

made significant changes in the Smith Act. For while petitioners contend that it was this view of the Court of Appeals which led it to hold that the trial judge was not required to charge the jury in terms of "incitement" (Pet. 30–31), we have shown that such a specific charge was not required under the original Smith Act as interpreted by this Court in *Dennis* v. *United States*, *supra*.

5. *The finding of "clear and present danger."* Petitioners contend that the trial judge failed to make a finding as to the existence of such a "clear and present danger" as would warrant their conviction under the Smith Act, and that he failed to make such a finding because he erroneously equated "clear and present danger" with petitioners' specific intent, as determined by the jury's verdict, to bring about the overthrow of the Government by force and violence as speedily as circumstances would permit. In view of the statements made by the trial judge in his opinions in ruling upon motions to dismiss the indictment and for a judgment of acquittal (Pet. App. 64, 135–137 (also reported in 102 F. Supp. at 96 and 106 F. Supp. at 923)), it is possible that he regarded the existence of such a specific intent as satisfying any prerequisite of a "clear and present danger." However, it should be noted that on both occasions the trial judge referred to the portion of Chief Justice Vinson's *Dennis* opinion (341 U. S. at 508–511) affirming the find-

ing of "clear and present danger" in that case. Thus, it is probable that the trial judge was adopting the language of that opinion as his finding in this case. In any event, we contend that since the determination of the requisite degree of danger involves a question of law for the judge, rather than the jury, it can be made or articulated by an appellate court, as it was in the *Dennis* case, and it was made in this case by the Court of Appeals.

In *Dennis* v. *United States,* 341 U. S. at 510, Chief Justice Vinson's opinion held that the clear and present danger concept, as applied to the Smith Act, means that:

> * * * In each case [courts] must ask whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.

It was specifically held (p. 513) that this "is a judicial rule to be applied as a matter of law by the courts" and that (p. 515) "the issue is properly one for the judge to decide." The determination to be made is whether there exist circumstances, including the nature of the Communist Party, the international relationships of the United States, and the recent activities of Communist groups and states throughout the world, which would justify Congress in concluding that the petitioners' conspiracy endangers fundamental interests of the nation. 341 U. S. at 510–511.

The method by which this determination is to be made was described by Mr. Justice Frankfurter in his concurring opinion, as follows (341 U. S. at 547):

> * * * But in determining whether application of the statute to the defendants is within the constitutional powers of Congress, we are not limited to the facts found by the jury. We must view such a question in the light of whatever is relevant to a legislative judgment. We may take judicial notice that the Communist doctrines which these defendants have conspired to advocate are in the ascendancy in powerful nations who cannot be acquitted of unfriendliness to the institutions of this country. We may take account of evidence brought forward at this trial and elsewhere, much of which has long been common knowledge. In sum, it would amply justify a legislature in concluding that recruitment of additional members for the Party would create a substantial danger to national security.

At the *Dennis* trial (see 341 U. S. at 510), Judge Medina merely told the jury that if they found that the defendants had violated the Smith Act as he had interpreted it,

> I find as matter of law that there is sufficient danger of a substantive evil that the Congress has a right to prevent to justify the application of the statute under the First Amendment of the Constitution.

However, it was the Court of Appeals for the Second Circuit in its *Dennis* opinion which for the first time articulated this finding by evaluating the defendant's conduct, as found by the jury, in the context of world conditions. Since such an evaluation is a question of law for judges, it could be made in the instant case by the Court of Appeals as well as by the trial judge. Here, the indictment covered the period 1948–1951—the same period covered by the indictment in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909. In affirming the conviction of the *Flynn* defendants, the Second Circuit held that "if the danger was clear and present in 1948 [the date of the *Dennis* indictment], it can hardly be thought to have been less in 1951, when the Korean conflict was raging and our relations with the Communist world had moved from cold to hot war." 216 F. 2d at 367. And in the instant case, the court below came to the same conclusion, stating that "world conditions at the date of [the *Dennis*] trial had not changed for the better when trial in the instant case was had." (Pet. App. 6). Indeed, a contrary conclusion would have warranted review by this Court.

The related contention that it was necessary for the trial judge or jury to find that these petitioners by themselves possessed "power to cause any attempted forcible overthrow of the Government" (Pet. 38–40) glosses over the integrated

and disciplined character of the Communist Party of the United States and embodies the test of imminent political violence which was rejected in *Dennis*. 341 U. S. at 509.

6. *The meaning of "organize" as used in the Smith Act.* Petitioners contend (Pet. 41–46) that the trial judge erred in instructing the jury that

> The verb "organize", as used in the Smith Act and the indictment, includes the recruiting of new members and the forming of new units, and the regrouping or expansion of existing clubs, classes and other units of any society, party, group or other organization. [106 F. Supp. at 935–936.] [11]

They argue that "the Communist Party is organized when it comes into being and is endowed to function as the Party", that this occurs "when at a formal convention a constitution is adopted and officers and committees elected", and that this event occurred in 1945 (Pet. 44–45). Accordingly, they contend that the trial judge should have instructed the jury that the three-year statute of limitations barred conviction under the organizing branch of the indictment. We contend that the trial judge interpreted the word "organize",

[11] Paragraph 3 of the indictment charged that as a part of the conspiracy petitioners and their co-conspirators "would cause to be organized groups, clubs, sections, and district, state and national units of said party * * * and would recruit, and encourage recruitment of, members of said party, concentrating on recruiting persons employed in key basic industries and plants."

as used in the Act, in the only way consistent with the clear purpose of Congress.

The creation of a group such as the Communist Party is a continuing process. Congress was not concerned with the legal and parliamentary mechanics by which a paper organization was established, but it was concerned with continuing activity to recruit and indoctrinate members and to organize them into various units or branches. By separately referring in Section 2 of the Smith Act to persons who organize or help to organize "any society, group, or assembly of persons", Congress sought to reach the leaders of such groups.

Petitioners' construction of "organize" would obliterate the organizing or leadership clause of the Act. This is illustrated by the fact that under their interpretation the "organize" clause of the Smith Act, enacted in 1940, could never have been applied to the leaders of the Communist Party of the United States which was first organized long before 1940, except for the fortuitous interlude of the Communist Political Association in 1944–1945.

To avoid the principle that statutes will not be given an absurd interpretation which frustrates a clear legislative purpose, petitioners assert that Congress modeled the Smith Act upon the California Criminal Syndicalism Act under which the word "organize" was construed by the California courts as embracing only the initial creation of an

organization. Accordingly, they contend (Pet. 43) that it must be presumed that Congress intended to use the word "organize" in the Smith Act with the meaning given to it by the California courts, citing for this contention *Willis* v. *Eastern Trust & Banking Co.*, 169 U. S. 295, 304–8; *James* v. *Appel*, 192 U. S. 129, 135; *Joines* v. *Patterson*, 274 U. S. 544, 549 (Pet. 41–43). Later, in *Carolene Products Co.* v. *United States*, 323 U. S. 18, 26, this Court noted that these cases "have established under suitable conditions" "the general rule that adoption of the wording of a statute from another legislative jurisdiction carries with it the previous judicial interpretations of the wording." But this Court continued that "It is a presumption of legislative intention, however, which varies in strength with the similarity of the language, the established character of the decisions in the jurisdiction from which the language was adopted and the presence or lack of other indicia of intention."

In the present case, the legislative history of the Smith Act contains no indication that Congress was aware of the California decisions relied upon by petitioners. More important, that history affirmatively shows that the draftsmen of the Smith Act were using as their principal model the 1902 New York criminal anarchy statute which was involved in *Gitlow* v. *New York*, 268 U. S.

652.[28] Since the "organize" clause of the New York statute[29] has never been given the narrow interpretation urged here by petitioners, there is no basis for presuming that Congress intended to adopt such a meaning by consciously modelling the Smith Act upon the New York statute. Ac-

[28] The Smith Act, Title 1 of the Alien Registration Act of June 28, 1940, 54 Stat. 671, was added on the floor of the House as an amendment by Congressman Smith. Mr. Smith stated that Congressman McCormack of Massachusetts was really the author of its language (84 Cong. Rec. 10452, cf. 85 Cong. Rec. 9032). By this, he meant that the language of the proposed amendment (*ibid.* 10451–10452) was the same as the language of H. R. 4313 introduced in 1935 in the 74th Congress. At that time, Mr. McCormack appeared before a House Judiciary Subcommittee in support of H. R. 4313, stating that the bill represented one of the recommendations of the Special (McCormack-Dickstein) Committee on Un-American Activities. In answer to a question as to whether the bill was drawn "along the same lines as the New York State statute", Mr. McCormack answered:

> Exactly; only in more simplified form. We have eliminated a number of elements which are contained in most State statutes.

(Hearings before Subcommittee No. 2 of the House Committee on the Judiciary, 74th Congress, 1st session, on H. R. 4313, May 22, 1935, Serial 5, p. 6). And in the discussion at the hearing, repeated reference was made to *Gitlow* v. *New York*, *supra*, a prosecution under the New York statute (*ibid.*, pp. 6–7, 107).

[29] It is Section 161 (4) of the New York Penal Law, as follows:

> Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such doctrine.

cordingly, the trial judge correctly attributed to "organize" a realistic meaning which carries out the purpose of Congress."[30]

7. *The denial of motions for continuance and mistrial.* Petitioners claim that they were deprived of a fair and impartial trial because of the denial of their motions for a continuance and for mistrial (Pet. 81).

Petitioners' motion for continuance was based on publication of a series of articles by Herbert Philbrick, a witness in the *Dennis* case, concerning his Communist Party activities, which were syndicated throughout the country and appeared in a Los Angeles newspaper at the time of the beginning of the trial. There was no mention of any of these petitioners in them, the closest connection being a reference to the "Notorious Communist 11" whose names are mentioned in the indictment, but whose identification could not be apparent to the jury. Nevertheless, on *voir dire,* the trial judge specifically asked the prospective jurors if they had read the articles, and determined that they had not (Tr. 61).

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[30] Webster's New International Dictionary (2d Ed.) defines "organize" as follows:

1. To furnish with organs; to give an organic structure to * * *. See organized.

2. To arrange or constitute in interdependent parts, each having a special function, act, office, or relation with respect to the whole; to systematize; to get into working order; as, to organize an army; to organize recruits.

Petitioners' motion for mistrial was based on the release on July 29, 1952, by the Senate Judiciary Subcommittee on Internal Security of a pamphlet, and its attendant publicity in the press, radio and television. This pamphlet, entitled *Documentary Proof That the Communist Party, U. S. A., Teaches and Advocates the Overthrow and Destruction of the United States Government by Force and Violence*, consists of a memorandum which the Director of the Federal Bureau of Investigation had previously, in June, 1952, delivered to the Senate Subcommittee *at its request*. The pamphlet consisted in large part of quotations from writings of Marx, Engels, Lenin and Stalin and from published comments on those writings by American Communist leaders, but did not mention any of these petitioners. While the facts above show to the contrary, petitioners alleged that "the prosecutor or its agents" publicly advised the jury on the eve of their deliberations of the contents of this report (Pet. 80).

At the time the matter was called to the attention of the trial judge, he offered to permit the defense to reopen argument to the jury; he also offered to make inquiry of the jury as to whether any of them had heard or read of the matter and, if so, whether any juror felt influenced by such extraneous publicity or felt unable for any reason to continue to sit with absolute impartiality and decide the case solely upon the evidence adduced in the courtroom. The trial judge pointed out

that there were four alternate jurors who had sat throughout the six months of the trial and who could be called upon to serve in the event any of the jurors might have felt the influence of any such publicity. 106 F. Supp., at 925.

The petitioners refused the court's offer, but requested that the jury be polled with a single question whether any of the jurors had heard or read of the report, it being their position that any further inquiry would be immaterial. Indeed, it is petitioners' contention here that "it is doubtful that any instructions under the circumstances could have saved the situation" (Pet. 80). The trial judge properly declined to limit the inquiry as the petitioners requested; and no mention of the matter was made in submitting the case to the jury, other than the caution that their verdict must be based solely upon the evidence in the case as adduced in the courtroom.

The single question of whether the jurors had heard of the report was not the critical test, but rather whether, if they had heard of it, they were influenced by it. We submit, with the court below (Pet. App. 38), that petitioners were clearly fencing when they rejected the court's offer to reopen closing arguments and to poll the jury as to whether they would be influenced by the report if they had, in fact, heard of it. Jurors' knowledge of publicity adverse to a defendant does not create any presumption of prejudice on the part

of the jury against the defendant. See *Holt* v. *United States*, 218 U. S. 245, 250–251; *Finnegan* v. *United States*, 204 F. 2d 105, 110 (C. A. 8); *United States* v. *Moran*, 194 F. 2d 623, 625 (C. A. 2), certiorari denied, 343 U. S. 965; *United States* v. *Kats*, 173 F. 2d 116, 117 (C. A. 3); *Shushan, et al.* v. *United States*, 117 F. 2d 110, 115–116 (C. A. 5), certiorari denied, 313 U. S. 475.

Similar motions have been made in substantially all Smith Act cases. Cf. *United States* v. *Dennis*, 183 F. 2d at 226. The same contention was made in *United States* v. *Flynn*, 216 F. 2d at 376, with respect to the release by the subcommittee of the pamphlet under consideration here (and which had mentioned by name two of the *Flynn* defendants).

Petitioners' argument is bottomed on the premise that all of the organs of Government which have a duty to publish facts affecting the public interest (particularly during such a period as the Communist aggression in Korea in 1952) must, nevertheless, become silent during their trial. The situation was totally unlike that in *Delaney* v. *United States*, 199 F. 2d 107 (C. A. 1), where a Congressional subcommittee held hearings in the city of trial concerning the precise issues upon which the defendant was tried. Cf. *Cramer* v. *United States*, 325 U. S. 1; *Stephan* v. *United States*, 133 F. 2d 87 (C. A. 6), certiorari denied, 318 U. S. 781.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for writs of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.
WILLIAM F. TOMPKINS,
Assistant Attorney General.
ROBERT W. GINNANE,
Assistant to the Solicitor General.
HAROLD D. KOFFSKY,
LAWRENCE K. BAILEY,
Attorneys.

SEPTEMBER, 1955.

U. S. GOVERNMENT PRINTING OFFICE: 1955